

REMARKS

Double patenting

The Final Office Action does not address Applicant's remarks concerning the double-patenting rejection. Applicant requests that the double-patenting rejection be withdrawn for reasons set forth in the response filed on June 7, 2007.

Section 102 rejection

"Pivot" and "rotate" are different

Claim 1 recites "a housing with a *rotatable* distal face and a stationary proximal face."

Referring to *Boppart* FIG. 18, the Examiner appears to regard the housing **280** as being the "housing" of claim 1.

The *Boppart* housing is *pivotable*. It is *not rotatable*. "Pivot" and "rotate" mean different things. They are not synonyms.

The Examiner is entitled to apply the broadest reasonable construction of a claim as it would be understood by one of ordinary skill in the art. However, that construction must be reasonable and consistent with what one of ordinary skill in the art who has read the specification would understand the claim to mean.

Applicant submits that one of ordinary skill in the art at the time of invention would have understood that "to pivot" means something different from "to rotate." One of ordinary skill in the art would have recognized that both rotation and pivoting involve motion along a portion of an arc of a circle. However, despite this, one of ordinary skill in the art would no doubt have recognized that these two English words mean different things.

Housing 280 lacks a *stationary proximal face*

It is quite clear that when the housing **280** pivots, *every point* on the housing, including any proximal face of the housing **280**, except the pivot point itself, moves. But the pivot point of the housing is *not* a "proximal face."

Distal face of housing 280 has no “eccentric port”

Referring to *Boppart* FIG. 18, the distal face of housing 280 is one large opening to accommodate the GRIN lens 62. This opening can be viewed as a “central port.” But with this being the case, there is no place left for an “eccentric port” on the distal face of housing 280.

In her remarks, the Examiner draws attention to multiple ports in FIG. 21 of *Boppart*, the implication being that one of those ports could be the “eccentric port” of claim 1.

FIG. 21 shows three sets of beams traveling away from the axis of rotation. Presumably, the Examiner regards one of these as originating from an “eccentric port” in the distal face of a housing. But these are not ports in the distal face of a housing. They are ports on a cylindrical wall that extends between a proximal and distal ends of a catheter.

The Examiner notes that these are ports in “the distal *portion* of the rotation shaft.” But a “distal *portion*” is not a “distal *face*.”

Applicant recognizes that a distal *portion* of an object can be construed broadly to *include* a distal face of that object. However, this does not constitute anticipation. The Examiner may be confusing *anticipation* with *infringement*. While a device with a distal face would *infringe* a claim to a device with a distal portion, a device with a distal portion does not *anticipate* a claim to a device with a distal face.

For the foregoing reasons, Applicant requests reconsideration and withdrawal of the section 102 rejection based on *Boppart*.

CONCLUSION

No fees are believed to be due in connection with the filing of this response. However, to the extent fees are due, or if a refund is forthcoming, please adjust our Deposit Account No. 06-1050, referencing Attorney Docket No. 12258-036001.

Applicant : Jeff Korn
Serial No. : 10/615,279
Filed : July 8, 2003
Page : 4 of 4

Attorney's Docket No.: 12258-036001

Respectfully submitted,

Date: November 30, 2007

Fish & Richardson P.C.
225 Franklin Street
Boston, MA 02110
Telephone: (617) 542-5070
Facsimile: (617) 542-8906

21796502.doc



Faustino A. Lichauco
Reg. No. 41,942